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ABSTRACT

This report discusses the outcomes of a study that investigated state appeals processes for students with disabilities who fail state-mandated graduation exams. State Web sites were studied to determine the extent to which there are other options for demonstrating skills, to check the availability of these to students with disabilities, and to collect information on appeals processes and the availability of waivers. Findings indicate that of the 19 states that require graduation exams, 10 require students with disabilities to pass the same graduation exams as students without disabilities in order to receive a standard diploma. Only six states had appeals processes (Georgia, Indiana, Minnesota, New Mexico, North Carolina, and Ohio), and these processes varied considerably from locally set procedures to relatively specific requirements. In one state, the appeals process is viewed as the avenue for students with disabilities to have access to accommodations. In most states, there is no evidence that students with disabilities have been considered. Further, states do not have data on the number of students involved in appeals processes, much less data disaggregated for students with disabilities. (Contains 15 references.) (CR)

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Synthesis Report 36

# Appeals Processes for Students Who Fail Graduation Exams: How Do They Apply to Students with Disabilities?

Martha Thurlow • Amy Esler

July 2000

NATIONAL CENTER ON EDUCATIONAL OUTCOMES

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## Executive Summary

High stakes tests that determine whether students earn a standard high school diploma are on the rise. They are viewed as the way to make sure that students meet high standards and graduate with the skills needed to be successful employees. At the same time that more and more states are investing in graduation exams, there are concerns about students who have met high standards, yet are unable to pass a test.

To determine the extent to which there are other options for demonstrating skills, and to check the availability of these to students with disabilities, we studied state Web sites for information on appeals processes and the availability of waivers. We found only six states with appeals processes, and these varied considerably from locally set procedures to relatively specific requirements. In one state, the appeals process is viewed as the avenue for students with disabilities to have access to accommodations. In most states, there is no evidence that students with disabilities have been considered. Further, states do not have data on the number of students involved in appeals processes, much less disaggregated for students with disabilities.

The difficulty we experienced in finding information about an appeals process is certainly encountered by students and families whose lives are affected by graduation exams. Without appeals processes, or easily found information on such processes, the likelihood that lawsuits will be viewed as the only avenue for recourse is dramatically increased.

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## Overview

With increasing frequency, standardized tests are being used to make decisions about students' educational placements and whether they receive a high school diploma. These "high-stakes" tests have enjoyed great popularity among policymakers and across the political spectrum, based on calls for high education standards (National Research Council, 1999). Recent attention to the effectiveness and quality of public education has resulted in federal and state efforts to improve curriculum content, instructional practices, and student performance. Goals 2000, the Improving America's Schools Act (IASA), which supports Title I programs, and the School-to-Work Opportunities Act all encourage the development of high content standards and the implementation of procedures that account for improved student performance. Although these laws do not directly address assessments with high stakes consequences for students (such as graduation exams), such exams are increasingly prevalent and must be addressed.

***High stakes tests have enjoyed great popularity among policymakers.***

The focus of this report is on what happens for students who do not pass graduation exams—exams that students are required to pass in order to receive a standard high school diploma. These tests purport to measure basic skills and competencies afforded by a general education and those that students will need to find viable employment. Proponents of the tests argue that the tests provide an equal standard for measuring the attainment of these basic skills for all students, and that requiring students to pass the tests ensures that all people with a diploma will possess the skills needed by potential employers.

Although many states are scheduled to have graduation exams implemented in the next few years, there currently are 19 states that require passing a graduation exam to receive a standard diploma (Guy, Shin, Lee, & Thurlow, 1999). Almost all of these states require students to pass subtests in the areas of English/Language Arts and Math. Seven states' exams contain a social studies content area, six states contain subtests in science, and two states contain subtests tapping other areas

(see Table 1). The tests tend to be multiple choice, and passing scores are based on the percent of items passed.

Critics of high-stakes testing have raised several concerns about using graduation exams as a requirement for receiving a high school diploma. First and foremost, the use of these tests may result in large numbers of students being denied high school diplomas. Many of these students will be low-income, nonwhite students. This is evidenced in Texas and Florida, where schools have experienced increased failure rates among their nonwhite student populations (GI Forum, 1997; National Coalition of Advocates for Students, 1998).

Because of the disproportionate number of nonwhite students not passing graduation exams, concerns have been raised about whether the tests accurately measure what students have been taught. Due to limited resources and other inequities, students in low income areas may not have received the instruction, materials, and resources received by other, more affluent populations (National Research Council, 1999). Florida was one of the first states to implement graduation exams and also one of the first to have to defend its testing in court because of this concern. In *Debra P. v. Turlington* (1981), it was found that African American students, because they were forced to attend segregated, inferior schools, had not been taught the material covered in the graduation exams. A U.S. court of appeals ruled that (1) students have a legally recognized property interest in receiving a high school diploma, (2) the graduation exam must be a fair measure of what students have been taught, and (3) students must have adequate advanced notice of the graduation exam requirement.

Students receiving special education services also are affected by the graduation exam requirements. Of the 19 states that require the exams, 10 require students with disabilities to pass the same graduation exams as students without disabilities in order to receive a standard diploma (see Table 2). It is questionable, therefore, whether these states consider graduation exams separate from other requirements that no special

**Table 1. Subject Areas Included in States' Graduation Exams**

| States that Require a Graduation Exam | English/ Language Arts | Math | Social Studies | Science | Other areas |
|---|---|---|---|---|---|
| Alabama | x | x | | | |
| Arizona | x | x | | | |
| Florida | [a] | x | | | x |
| Georgia | x | x | x | x | |
| Indiana | x | x | | | |
| Louisiana | x | x | x | x | |
| Maryland | x | x | x | x | |
| Minnesota | x | x | | | |
| Mississippi | x | x | | | |
| Nevada | x | x | | | |
| New Jersey | x | x | | | |
| New Mexico | x | x | x | x | |
| New York[b] | x | x | x | x | |
| North Carolina | x | x | | | x |
| Ohio | x | x | x | x | |
| South Carolina | x | x | | x | |
| Tennessee | x | x | x | x | |
| Texas | x | x | | | |
| Virginia | x | x | x | x | |

[a] Florida does not require students to pass the content area of English/Language Arts; however, it does require students to pass a subtest in the area of Communications.

[b] New York education officials are considering whether a small number of schools can substitute individually-tailored projects for the graduation exams (Keller, 2000).

**Table 2. Changes in Requirements Allowed for Students with Disabilities to Earn a Standard Diploma**

| | Changes Allowed | | | | | |
|---|---|---|---|---|---|---|
| **States with Graduation Exams** | **None** | **Exemption from Exam** | **Alternative Exam** | **IEP Completion** | **IEP Team or LEA Decision** | **Other** |
| Alabama | x | | | | | |
| Arizona | | | | | x | x[a] |
| Florida | x | | | | | |
| Georgia | | | | | | x[b] |
| Indiana | | | | | | |
| Louisiana | x | | | | | |
| Maryland | x | | | | | |
| Minnesota | | | | | | x[c] |
| Mississippi | x | | | | | |
| Nevada | x | | | | | |
| New Jersey | | x | | | | |
| New Mexico | | | | | x | |
| New York | | | x[d] | | | |
| North Carolina | x | | | | | |
| Ohio | | x | | | | |
| South Carolina | x | | | | | |
| Tennessee | x | | | | | |
| Texas | x | | | | | |
| Virginia | x | | | | | |

[a] Students with disabilities may take an out-of-level test and meet graduation requirements.
[b] Waiver from graduation requirements is allowed for students with disabilities.
[c] Students with disabilities may earn a standard diploma, but the transcript shows whether the student passed the exam at the "state" or "individual" level.
[d] Alternative exam is available only to students with disabilities.

education decision be based on any single score (National Research Council, 1999).

It is important to determine whether other options are available to taking and passing graduation exams. Some types of appeals process is one possible option that might be used by a limited number of students to demonstrate their knowledge and skills in other ways than through a paper and pencil test (Thurlow & Thompson, 1999). The availability of this type of option to students with disabilities is important to determine.

***An appeals process might provide students with opportunities to demonstrate their knowledge and skills in other ways than through a paper and pencil test.***

## Method

Since we expected that these other options probably would be accessed through some type of appeals process, we decided to ask states about these. The policies in the 19 states that require students to pass a graduation exam to receive a high school diploma were investigated to gather information on the appeals processes available to students who do not pass the graduation exams and who believe they have the skills to receive a standard diploma. The Web sites of the 19 states' departments of education were reviewed for information on a process or waiver that would allow students and their families to appeal a school's decision to deny the student a diploma based on failure of the graduation standards exam. All information regarding graduation exams or basic skills tests on these Web sites was investigated.

For the states that reported information pertaining to an appeals process, the Web sites were again searched for a contact person who would be able to provide more information on the appeals process. If that information was available, the contact person was contacted via telephone or e-mail and asked for specifics on the appeals process.

## Findings

Only six states provided information on their Web sites on an appeals process for students who do not pass the graduation exam. These states were: Georgia, Indiana, Minnesota, New Mexico, North Carolina, and Ohio. Descriptions of the processes ranged from references to a local school district appeals process to descriptions of the types of alternative assessments needed to receive a waiver from all or parts of the graduation exam. In addition, Louisiana's Web site mentioned that the State Department of Education would be developing appeals processes and recommend them to the Board of Elementary and Secondary Education in January 1999. No newer information was available on the Web site.

***Georgia, Indiana, Minnesota, New Mexico, North Carolina, and Ohio provided information on an appeals process for students who do not pass the graduation exam.***

Georgia, Indiana, and New Mexico all reported descriptions of alternative assessments and information needed for obtaining a waiver from the graduation exam on their Web sites. This information is reported in Table 3.

**Georgia's** Web site had the most comprehensive information, including details about the kinds of school records, data, and justifications that need to be reported in a request for a waiver, as well as information about the steps in the appeals process itself. It is a two-tiered process, requiring a parent or student request to the local school superintendent and a report from the local school superintendent to the State Superintendent. The parent/student request must describe alternative assessments and a justification for their replacement of the graduation exam. The local superintendent's report must include this information and a recommendation for or against granting a waiver. The intent of the waiver process is to allow accommodations for students with disabilities, and historically, Georgia's State Board of Education has only been in favor of approving waivers for students who have failed the graduation exam (S. Hunt, personal communication, March 14, 2000).

**Indiana** requires a student, parent(s), or guardian to obtain a written recommendation from a teacher in each subject area in which the student has not achieved a passing score on the graduation exam. To receive a

**Table 3. States' Appeals Processes for Students Who Fail Graduation Exams**

| States | Local appeals process | Appeals process described | Alternate assessments specified | | | |
|---|---|---|---|---|---|---|
| | | | Alternate exams | Course work | School Recommendation | Written justification |
| Georgia | | x | x | x | x | x |
| Indiana | | x | x | x | x | |
| Minnesota | x | | | | | |
| New Mexico | | x | x | x | x | |
| North Carolina | x | | | | | |
| Ohio | x | x | | | | |

waiver, the recommendation must be concurred with by the principal of the student's school and be supported by documentation that the student has attained the academic standard in the subject area, based on tests other than the graduation exam or classroom work. Because the class of 2000 is the first that must meet the graduation standard requirement, no students have been granted an appeal/waiver at this point (W. Bruce, personal communication, March 14, 2000).

Finally, **New Mexico** requires that the request for waiver be made by local school districts to the State Superintendent. Alternative assessment procedures, demonstrating that the student has mastered the basic competencies contained in the exam, must be reported for each student needing a waiver if the school district intends to award a diploma to that senior. The Web site lists appropriate alternative assessments as including coursework grades; scores obtained on out-of-state high school competency-type tests; written recommendations from current teachers in the appropriate content areas; and results of other tests, exams, exhibits, and/or demonstrations of student performance. However, these waivers typically only are granted to students who transfer in from out-of-state in their senior year after administration of the exam (J. Travelstead, personal communication, January 13, 2000).

**Minnesota, North Carolina**, and **Ohio** make reference to local school district appeals processes for students who do not pass the graduation exams. Ohio describes an appeals process in which a district appeals to the state superintendent of public instruction on behalf of any student who has met course requirements and has a Grade Point Average (GPA) of 2.5 or higher. If the state superintended deems the student eligible, the student can then retake the test(s), administered orally in accordance with administration procedures. LEP students may be provided an interpreter. Minnesota and North Carolina do not provide specific information on their local appeals processes.

***None of the states with an appeals process knows how many students go through the process.***

While searching the Web sites, NCEO received some information on graduation exam policies for **Louisiana** and **Virginia** through other sources. NCEO received a personal communication from the Louisiana Department of Education regarding "rescoring" of their graduation exit exam. While different from receiving a waiver from passing the exam, rescoring represents an appeals process for students who fail certain parts of the exam. In some cases, students may request a rescoring of their Written Composition, English Language Arts, Mathematics, Science, and Social Studies tests. Seniors who fail the Written Composition test will have their tests automatically rescored. To make the request, students are given a form letter to fill out and submit to the District Test Coordinator, who considers the request (C. Price, personal communication, October 13, 1999).

In April 2000, the Virginia Board of Education endorsed a change in its graduation exam requirement, adding a provision that would allow students who failed the exams but had an otherwise strong academic record to receive a diploma. Under the proposal, a local school board could award graduation credits to a student whose performance on the state Standards of Learning (SOL) tests "is inconsistent with other recognized indicators of academic achievement." At the time of the proposal, state board members did not spell out what would be required of such students, and whether that might include grades, scores on vocational tests, or additional criteria (Benning, 2000).

None of the states document (or even know) how many students receive waivers or go through an appeals process after failing the graduation exams. Furthermore, no states document (or even know) how many students who receive waivers or who appeal the decision are students with disabilities.

## Discussion

***The majority of states with graduation exams do not have an appeals process.***

Of the 19 states that require students to pass a graduation exam to receive a standard diploma, the majority of states do not have an appeals process outlined for students who do not pass the exam. Only five states make mention of an appeals process or waiver on their Web sites. Two of these states, Minnesota and North Carolina, only state that a local appeals process will be in place for students who do not pass the exams.

The decision to deny a student a high school diploma has a potentially lifelong impact. There is little research on the specific consequences of passing or failing a high school graduation exam. However, there is a large base of research on how having a high school diploma affects students' futures. A study by Jaeger (1989) asserts that receipt of a high school diploma is a better predictor of a student's future employment and salary than performance on a basic skills test. Having a high school diploma, regardless of a student's performance on a skills test, largely determines whether a student receives employment and how much money that person will earn. Moreover, statistics from 1997 show that, in 1997, the unemployment rate of men ages 25 to 34 who lacked a high school diploma was more than twice the rate of men who had diplomas. At the same ages, unemployment was three times higher for women who had dropped out of high school than among graduates (National Center for Education Statistics, 1998, as cited in National Research Council, 1999).

Moreover, the issues raised in *Debra P. v. Turlington* (1981) have not been resolved. States cannot ensure that all students have received the

same instruction on the same material before taking the graduation exam. Some states have tried to address this concern by allowing a delay of several years before implementing high-stakes graduation exams so that schools will be able to prepare for teaching the skills relevant for the exams (National Research Council, 1999).

***States need to ensure that all students, including students with disabilities, are afforded the opportunity to participate in the appeals process.***

A final concern involves validity. The National Research Council (1999) has determined that decisions based on one test score represent an inappropriate use of a test. Indeed, the Americans with Disabilities Act (1990) and the Individuals with Disabilities Education Act (1997) both state that decisions about placement in special education cannot be based on one test score or informant. Furthermore, the Improving America's Schools Act, which supports Title I funding, indicates that measuring of progress is to be based on multiple measures. While some states consider scores on exams along with coursework, grades, and other assessments in making a decision to grant or deny a diploma, the 19 states considered in this report require passage of the graduation exams, regardless of students' performance in other areas, to receive a standard diploma.

Some legal groups already have challenged the validity of graduation exams in court. In Texas, the Mexican American Legal Defense and Educational Fund argued that the Texas Assessment of Academic Skills violated the constitutional and civil rights of African American and Hispanic students and should be eliminated as a graduation requirement because these students were "disproportionately negatively affected" by the exam. The plaintiffs argued that the failure rates among African Americans and Hispanics were more than twice that of whites in February 1997—51 percent for African Americans, 49 percent for Hispanics, and 19 percent for whites (Zehr, 1999). In January, a federal judge ruled that the graduation exam is constitutional (Zehr, 2000).

A more recent case in Indiana challenged the graduation test for students with disabilities because of unequal opportunity to learn (Olson, 2000a), as well as inadequate testing accommodations. Even though a state court initially stayed the use of the test for diploma decisions, the Marion

Superior Court upheld the graduation exam requirement for all students (Olson, 2000b).

Considering the many concerns and critiques related to high-stakes testing, potential challenges to decisions to deny high school diplomas based on performance on a graduation exam can be anticipated. States will need to develop appeals processes to handle such challenges. Furthermore, they will need to ensure that all students, including students with disabilities, are afforded the opportunity to participate in the appeals process.

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